ment depending on it for validity should thus be recognized under the "full faith and credit" clause of the Constitution. But whether the doctrine would conform to the English standard of natural or substantial justice is doubtful,[17] and might be made to depend on the special facts of each case.

IS A PERSON NATURALIZED IN AUSTRALIA A BRITISH SUBJECT IN ENGLAND? — In *The King* v. *Francis, Ex parte Markwald*,[1] a natural-born subject of Germany, who had emigrated in 1878, had settled in Australia, and had become naturalized there in 1908, was held to be an alien in England.[2]

The status of the subject is distinguished from that of the alien by allegiance.[3] A state is composed of certain members or persons known as its nationals.[4] All others are foreigners or aliens.[5] Naturalization is the act of adopting a foreigner and conferring upon him the nationality of a state.[6] Allegiance is bilateral. Hence to have a complete change of nationality three things are essential: (1) the consent of the subject, (2) the consent of the state of which he is a member,[7] and (3) the consent of the state of which he desires to become a member. It is quite possible for a person to cease to be a subject of one state without acquiring another nationality and thus to be without a country.[8] It is also not unusual for a person to acquire a new nationality without ceasing to be a subject of another state and thus to be of double nationality.[9] Whether a national of one state has ceased to be a national of that state depends exclusively upon its law. Whether he has acquired nationality in another state depends exclusively upon the law of that other state. In determining whether an individual is an alien in a particular state the question to be decided is not whether he is still a subject of his former state but whether he has become a subject of the particular state according to its law.[10] Whether a German subject continues to be so depends, therefore,

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[17] The civil law system of issuing execution on a foreign judgment avoids much of the theoretical difficulty that our law encounters by requiring a suit on the judgment. See PIGGOTT ON FOREIGN JUDGMENTS, 2 ed., 22.

[1] [1918] 1 K. B. 617. See RECENT CASES, p. 976, *infra*.

[2] The same result was reached in a subsequent proceeding. Markwald *v.* The Attorney General, 36 T. L. R. 197. See RECENT CASES, p. 976, *infra*. The petitioner was convicted for failing to register as an alien under the Aliens Restriction (Consolidation) Order of 1916, § 19 (1) (*a*). See 1916, 1 STAT. RULES AND ORDERS, 11. The power to issue such an order was conferred upon the Crown by the Alien Restriction Act of 1914, which provided for registration of aliens but left that word undefined. See 4 & 5 GEO. V, c. 12.

[3] The Case of the Marshall of the King's Bench, Y. B. 33 HEN. VI, f. 1, pl. 3 (1455); Calvin's Case, 7 Rep. 1 (1608). See 32 HARV. L. REV. 160.

[4] See 3 MOORE, DIG. INTERNATIONAL LAW, § 372.

[5] See WESTLAKE, INTERNATIONAL LAW, Pt. I, 3, 198.

[6] *Ibid.*, 225; 1 OPPENHEIM, INTERNATIONAL LAW, 2 ed., § 305; VAN DYNE, NATURALIZATION IN THE UNITED STATES, 5.

[7] MacDonald's Case, 18 How. St. Tr. 857 (1746); Rex *v.* Lynch, [1903] 1 K. B. 444.

[8] See 1 OPPENHEIM, INTERNATIONAL LAW, 2 ed., § 311.

[9] *Ibid.*, § 309.

[10] Geshwind *v.* Huntington, [1918] 2 K. B. 420; Dawson *v.* Meuli, 118 L. T. R. 357 (1918); *Ex parte* Freyberger, [1917] 2 K. B. 129; Vecht *v.* Taylor, 33 T. L. R. 317 (1917); Sawyer *v.* Kropp, L. J. 85 K. B. 1446 (1916).

upon German law;[11] whether he has become a British subject depends upon British law. Whether he is an alien in either state depends upon whether he is or is not a national of that state.

Prior to 1914 naturalization in Australia was governed by three statutes. The Naturalization Act of 1870[12] conferred power upon the legislature of a British possession to grant naturalization "to be enjoyed within the limits of such possession." The Commonwealth of Australia Constitution Act of 1900[13] simply gave power to naturalize. The Naturalization Act of Australia of 1903[14] provided, in the exercise of the power thus conferred, for a naturalization to be enjoyed within the territorial limits of Australia. Whether colonial naturalization in view of this restrictive clause makes the recipient a full British subject is a matter of British constitutional law. That he would be according to international law for international purposes there cannot be much doubt.[15] The restrictive words may be explained by saying that they prevent one possession from exceeding its territorial jurisdiction and define and limit the rights of a naturalized person in that place.[16] The naturalizing state may of course grant naturalization upon its own terms, and it is conceivable that a naturalized British subject might have certain rights and disabilities in a possession that he would not have in another possession or in the United Kingdom. But to consider a person a subject in a particular locality only is contrary to the general conception that nationality follows the person and does not depend upon the territory in which he happens to be. If a possession be considered a separate sovereignty or independent state, it is possible to speak of its members as its subjects and to think of them as aliens in the mother country. It is impossible to support this doctrine of a limited naturalization, in the sense that it is used in the principal case,[17] upon any other theory and at the same time conceive of it as a naturalization. Such a doctrine, however, would be irreconcilable with British imperial theory. It would mean that the British Empire would be composed of many distinct sovereignties and nationalities. But this proposition has been strongly denied. It is settled that one born in any part of the empire is a British subject and

[11] According to German law German nationality could be lost by express permission of the state or by an uninterrupted residence for ten years in a foreign country. See North German Nationality Law, 1870, § 21; BUNDES-GESETZBLATT DES NORDDEUTSCHEN BUNDES, 358. Until 1913 there was no general statute to the effect that a German lost his nationality upon naturalization in a foreign country. See also German Military Law of May 2, 1874, § 11; 1874 REICHS-GESETZBLATT, 45; German Imperial and State Nationality Law of July 22, 1913, §§ 13, 17, 25, 26, 31; KELLER AND TRAUTMANN, KOMMENTAR ZUM REICHS- UND STAATSANGEHÖRIGKEITGESETZ; 8 AM. JOURN. INTER. L., Suppl. 217; 20 CLUNET, JOURNAL DU DROIT INTERNATIONAL PRIVÉ, 800–810, 906–907; 22 CLUNET, 640; *Ex parte* Weber, [1916] 1 K. B. 280, [1916] A. C. 421; The King *v.* Vine Street Police Superintendent, *Ex parte* Liebmann, [1916] 1 K. B. 268.

[12] See 33 VICT., c. 14, § 16.

[13] See 63 & 64 VICT., c. 12.

[14] See 1903, 2 ACTS OF THE PARLIAMENT OF AUSTRALIA, 96.

[15] See 16 STAT. AT L., 775. See also 1 OPPENHEIM, INTERNATIONAL LAW, 2 ed., § 307.

[16] See WESTLAKE, INTERNATIONAL LAW, Pt. I, 229. This seems to be the correct interpretation when the context of the Acts of 1870 and 1903 is considered. See Act of 1903, §§ 3, 7, 8. See also 3 MOORE, DIG. INTERNATIONAL LAW, § 375.

[17] *Ex parte* Markwald, *supra*. Darling, J. (at p. 622), says, "A man may become the liege subject of the King in some part of his dominions yet not in all."

not a subject of that part.[18] It is obvious that an individual can be a British subject without being a subject of the United Kingdom. But it has never been suggested in modern times that a British subject born in a possession would be an alien in the British Isles. And there is no good reason why a naturalized colonial should in this respect be considered in a different class. His British nationality would prevent his being an alien. An analogous situation existed at a time when Porto Ricans were not citizens of the United States. Although not citizens in the United States they were nationals of the United States because citizens of Porto Rico, and hence they were not considered as aliens.[19] The decision of the court in *Ex parte Markwald* is based upon a strained and unfortunate interpretation of statutes.[20] It seems even more strained in that it disregarded a contemporary statute which appears to settle the question conclusively the other way. The British Nationality and Status of Aliens Act of 1914 defines the terms "alien" and "British subject," [21] repeals former naturalization laws, and provides that naturalization by a British possession has the same effect as that granted in England.[22]

THE STEEL CORPORATION CASE.[1] — The United States Steel Corporation was formed in 1901 as the culmination of a series of prior combinations resulting in part from the necessity of integration, that is, vertical combination with continuity of operations from the mine to the finished product. The Steel Corporation was a combination of combinations bringing under one control about one hundred and eighty concerns which prior to the original mergers had produced from eighty to ninety per cent of the total output of the country. Dissolution proceedings were begun under the Sherman Anti-Trust Act in 1911 and the bill was dismissed by the District Court,[2] the four judges finding that

[18] Gibson *v.* Gibson, [1913] 3 K. B. 379; *Re* Johnson, Roberts *v.* The Attorney General, [1903] 1 Ch. 821. In the latter case Farwell, J., said, (at p. 832), "He is a subject of the British Crown and . . . his nationality is the British Empire."

[19] Gonzales *v.* Williams, 192 U. S. 1 (1903). See 17 HARV. L. REV. 412.

[20] It was not necessary to hold that Markwald was an alien because of war-time exigencies. Power had been conferred upon the Crown to try by court martial any person who communicated with the enemy or committed other forbidden acts. See Defense of the Realm Act of 1914, 4 & 5 GEO. V, c. 29; The King *v.* Halliday, *Ex parte* Zadig, [1917] A. C. 260.

[21] See 4 & 5 GEO. V, c. 17, § 27.

[22] *Ibid.*, §§ 8 (2), 28. This statute defines an alien as one who is not a British subject, and a British subject as a natural-born subject, or one to whom a certificate of naturalization has been granted "under the provisions of this Act or under any Act repealed by this Act." It repeals the Naturalization Act of 1870. It is therefore difficult to understand why a person naturalized in Australia in 1908 would not come within the express statutory definition of a British subject. In determining what the term alien included in the Aliens Restriction Act of 1914 the court might well have taken into account the definition contained in the British Nationality and Status of Aliens Act of 1914.

[1] For a review of the authorities under the Sherman Anti-Trust Act through the Standard Oil and Tobacco cases see 25 HARV. L. REV. 31. Important decisions since that article are Standard Sanitary Mfg. Co. *v.* United States, 226 U. S. 20 (1912); United States *v.* Winslow, 227 U. S. 202 (1912); Eastern States Lumber Ass'n *v.* United States, 234 U. S. 600 (1913). See also Albert M. Kales, "Good and Bad Trusts," 30 HARV. L. REV. 830; "The Sherman Act," 31 HARV. L. REV. 412.

[2] 223 Fed. 55 (1915).